United States General Accounting Office

GAO

Report to Congressional Requesters

August 2000

TRANSIT GRANTS

Need for Improved Predictability, Data, and Monitoring in Application Processing

GAO

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GAO/RCED-00-260

G A O
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United States General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-285911

August 30, 2000

The Honorable Phil Gramm
Chairman, Committee on Banking,
Housing, and Urban Affairs
United States Senate

The Honorable Wayne Allard
Chairman, Subcommittee on
Housing and Transportation
Committee on Banking, Housing,
and Urban Affairs
United States Senate

The Honorable Mike Crapo
United States Senate

The Transportation Equity Act for the 21st Century (TEA-21) authorized about $42 billion for transit programs for fiscal years 1998 through 2003. The Department of Transportation's (DOT) Federal Transit Administration (FTA) provides these funds through grants to states and local and regional transportation providers for the construction, acquisition, improvement, and operation of transit systems. However, a number of requirements must be met before FTA can release funds to grant applicants. For example, the Department of Labor (DOL) must certify that adequate labor protection arrangements (commonly called *labor protection certifications* or *section 13 (c) arrangements*) are in place to protect the interests of employees affected by federal transit assistance.[1]

You asked us to (1) review the timeliness and consistency of FTA's processing of grant applications, (2) identify the number of applications for labor protection certifications for which DOL's processing time extended beyond 60 days and the factors contributing to any processing delays, and (3) provide information on the Administrative Procedure Act (APA) in connection with DOL's certification process. Also, because transportation

[1]DOT has determined that certain grants and loans to state and local government authorities for special needs of elderly individuals and individuals with disabilities do not require a labor protection certification.

services are delayed when federal transit funds are not received in a timely manner, you requested any suggestions to help ensure the timely release of these funds.

Results in Brief

FTA's data demonstrate that it processed less than half of the transit grant applications within its informal 90-day goal during the 21-month period from October 1998 through June 2000. On average, the time that FTA spent in processing the approximately 1,800 applications during this period was 136 days. Furthermore, only 1 of FTA's 10 regional offices had an average processing time of less than 90 days. FTA's headquarters officials told us that they have not analyzed why the agency's informal goal is often not met or why there are differences in regional processing times.

From January 1996 through April 2000, DOL provided a labor protection certification for 93 percent of the transit grant applications within 60 days of receipt from FTA. For the 7 percent that took longer than 60 days, the most common factor contributing to processing delays was the submittal of an incomplete application. Of the 273 applications that took more than 60 days to process, 117 were suspended for this reason. Delays in processing grant applications also occur when an applicant and/or labor union objects to the labor protection terms and conditions proposed by DOL; 105 of the 273 applications were delayed for this reason.

Representatives of the transit community have suggested that APA should apply to the DOL certification process in order to improve the accessibility and consistency of DOL's decisions. However, the transit community is concerned that some APA procedures could lengthen the grant approval process and further delay the release of grant funds. To further the objectives of disclosure and consistency in its labor certification process, DOL could take actions without applying specific APA procedures that could lengthen the grant approval process. For example, while information on certification decisions is available on request from DOL, the agency could broadly disseminate significant certification decisions. DOL is working on making such information available through a Website that is under development.

When transit applications are not processed in a timely manner, transit benefits are delayed, and transportation needs are not met. In addition, the lack of predictability and consistency in processing times can make planning and project execution difficult for applicants. For example, a delay of several weeks in application processing in regions with a

particularly short construction season could have a substantial impact on the completion of a transit project. A periodic assessment of its grant application process, including DOL's certification of labor protection arrangements, would provide a basis for FTA to identify and address processing delays and problems. In addition, it would enable FTA to provide the transit community and others with information on the status of grant applications.

Therefore, to increase the predictability and timeliness of FTA's application processing, we are recommending that FTA, in cooperation with DOL, periodically assess its application processing efforts and report the results of the assessment to the Congress.

Background

FTA provides states, local and regional transportation providers, and others with grants for the construction, acquisition, improvement, and operation of transit systems and projects through a variety of programs. TEA-21 authorized about $42 billion for transit programs for fiscal years 1998 through 2003. Currently, FTA oversees about 4,400 active grants to 860 state and local transit providers. From October 1, 1998, through June 30, 2000, FTA processed approximately 1,800 transit grant applications representing over $10.5 billion in federal funds.

FTA is responsible for reviewing grant applications to determine the merits of proposed projects and their eligibility for federal assistance. FTA carries out its mission through 10 regional offices, and its regional staff are the main point of contact for almost all grants. Applications for grants are submitted through FTA's Transportation Electronic Award and Management (TEAM) database to applicable regional offices. FTA's regional offices are generally responsible for ensuring that each grant applicant has responded to a variety of required certifications and assurances before FTA can provide funds. One of these certifications is DOL's labor protection certification. DOL is responsible for certifying that fair and equitable labor arrangements exist to protect employees who might be adversely affected by federal assistance before FTA awards funds to transportation providers.[2]

In carrying out its responsibilities, DOL recommends protective terms and conditions to grant applicants and unions to allow parties the opportunity

[2]FTA tries to submit applications to DOL within 3 days of their submission to FTA, thus enabling FTA and DOL to essentially carry out their responsibilities concurrently.

to review the proposed terms and conditions and submit objections, if any, before it provides a final labor protection certification. If an objection is submitted, DOL considers its validity. If DOL determines that the objection is not valid, it issues a certification that is based on the terms and conditions that it recommended to the parties. If it determines that the objection is valid and the parties are unable to resolve disputed matters through negotiations, the parties can submit legal arguments (briefs) to DOL and respond to the arguments presented. Thereafter, DOL makes a determination and explains its reasons for requiring specific arrangements in certification decisions. If these terms and conditions are not acceptable to the grant applicant, DOL officials said that the grant applicant has the option to forgo federal transit assistance.

FTA Generally Does Not Meet Its Informal Application Processing Goal

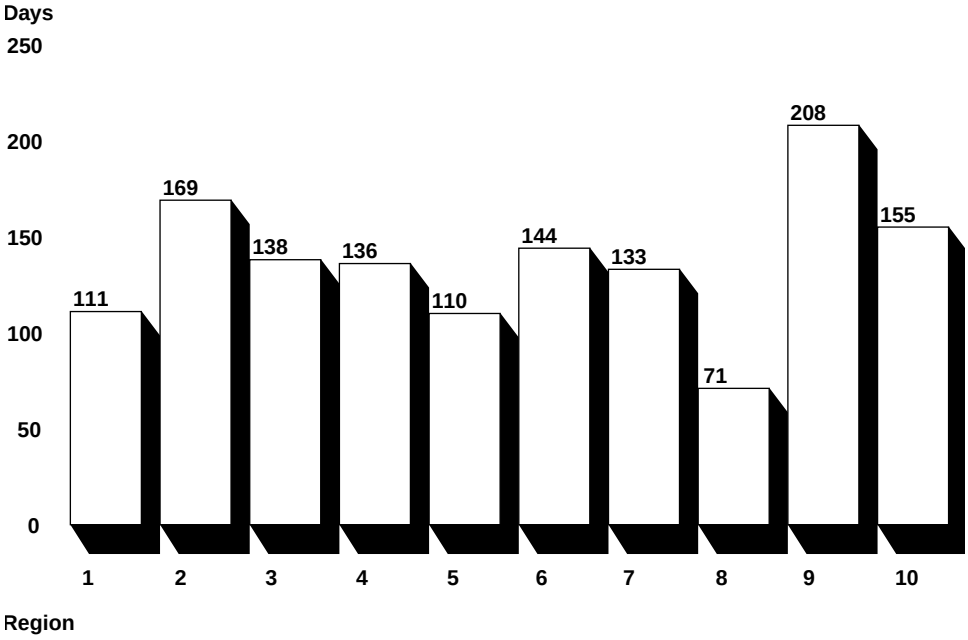
Although FTA tracks overall transit grant obligation rates and projects that are congressionally designated, FTA's headquarters officials stated that they do not monitor application processing because this is basically a role that is carried out by FTA's regional offices. However, following a Senate Committee on Banking hearing on transit funding delays on April 25, 2000, FTA officials told us that they recognized a need to develop basic nationwide data on the agency's processing of transit grant applications. We recognized this need almost 20 years ago; in 1981 we reported that the then federal transit agency had not established time limits for processing grant applications and was not collecting the data it needed to monitor regions' grant-processing activities.[3] As a result, we noted uncertainty over the availability of federal funds and the lack of assurance that grant applications were being processed on a timely basis. Furthermore, the lack of predictability and consistency in processing times can make planning and project execution difficult for applicants. For example, a delay of several weeks in application processing in regions with a particularly short construction season could have a substantial impact on the completion of a transit project. FTA's headquarters officials noted that such an adverse affect could be mitigated if a grant applicant were permitted to incur project costs without first receiving formal project approval from FTA. By means of such a mechanism, a grant applicant may spend local funds for project activities and be reimbursed by FTA if and when a project is approved. However, FTA officials told us that no analysis has been done on the use of such preaward authority.

[3]See *Soaring Transit Subsidies Must Be Controlled* (CED-81-28, Feb. 26, 1981).

In the spring of 2000, FTA's headquarters officials began using FTA's TEAM database to gather nationwide application information, such as the number of transit applications processed, the types of applications processed, and regional data on processing times. The resulting FTA analysis is based on approximately 1,800 transit applications for $10.5 billion in federal funds awarded from October 1, 1998, through June 30, 2000. The analysis shows that the average FTA processing time was 136 days from the submission of an application until the award (obligation) of funds. FTA has an unofficial goal of processing applications within 90 days, which takes into account the multiple certifications and assurances that must be completed prior to the award of federal funds. FTA's headquarters officials stated that the informal goal of 90 days was selected 15 to 20 years ago for the urban formula grant program and that since no goals had been established for other FTA programs, the 90-day informal formula grant goal was used for all FTA programs in their July 2000 analysis. FTA's analysis showed that the goal was met for less than half—42 percent—of the applications that FTA processed.

In addition, as shown in figure 1, FTA's analysis indicates that only 1 of its 10 regional offices had an average processing time of less than 90 days. The processing times for FTA's regional offices ranged from a low of 71 days to a high of 208 days from the receipt of an application to the award of transit funds.

Figure 1: Average Processing Times by FTA Regional Offices From October 1998 Through June 2000



Note: Regional locations are Region 1—Massachusetts, Region 2—New York, Region 3—Pennsylvania, Region 4—Georgia, Region 5—Illinois, Region 6—Texas, Region 7—Missouri, Region 8—Colorado, Region 9—California, Region 10—Washington State.

Source: GAO's presentation of data from FTA.

FTA's headquarters officials told us that they are aware of several reasons for application processing delays, such as environmental difficulties associated with an application or difficulties encountered by grantees in fulfilling planning requirements. However, FTA has not performed a systematic assessment to determine why its informal goal is often not met or why the processing times for its regional offices vary widely. In addition, the agency recognizes that any attempt to analyze the data would be difficult because the reasons for delays are not systematically tracked and recorded in the TEAM's database. If there is an inquiry regarding a specific application, however, FTA officials stated that they check with the appropriate regional office to obtain information on that application.

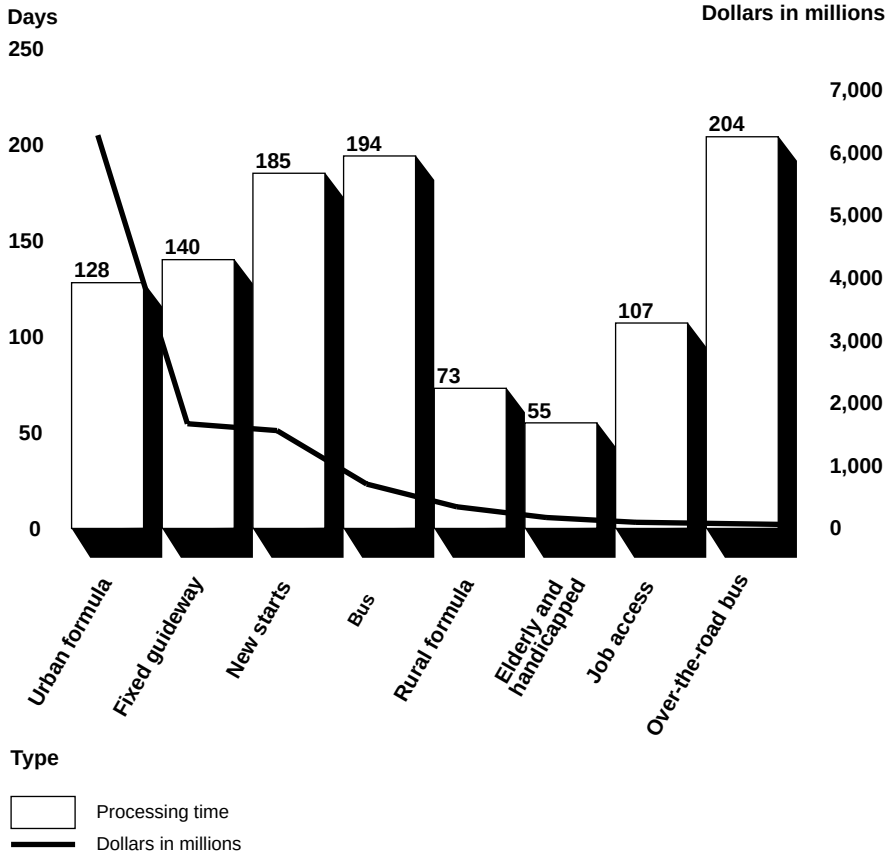
Furthermore, differences exist in the processing times for transit grants by the type of grant. As shown in figure 2, the Elderly and Persons with Disabilities Program grants took the least amount of time to process—averaging 55 days—compared with Over-the-Road Bus Accessibility Program grants, which averaged 204 days.[4] In addition, this figure compares FTA's application processing time with federal program dollars. As FTA officials noted, their largest funded program, Urbanized Area Formula,[5] is taking considerably longer than expected, with an average processing time of 128 days from receipt of an application to the award of grant funds. In contrast, a relatively new and small program, Job Access and Reverse Commute,[6] is taking less time than expected, with an average processing time of 107 days. However, FTA officials told us that although they were aware of basic factors, such as a new program with inexperienced new grantees, that can contribute to application processing time differences, they have not performed any assessment of what accounts for the differences in application processing time by type of grant.

[4]The Elderly and Persons with Disabilities Program is designed to provide financial assistance in meeting the transportation needs of elderly persons and persons with disabilities where public transportation services are unavailable, insufficient, or inappropriate. The Over-the-Road Bus Accessibility Program is designed to assist operators of buses in financing the incremental costs of complying with DOT's final rule regarding bus accessibility required by the Americans With Disabilities Act.

[5]The Urbanized Area Formula Program is designed to assist in financing the acquisition, construction, leasing, maintenance, planning, and improvement of facilities and equipment for use in mass transportation services.

[6]The Job Access and Reverse Commute Program is designed to develop transportation services for welfare recipients and other low-income individuals to get them to and from jobs and to bring those in rural and suburban areas to suburban employment centers.

Figure 2: FTA's Grant Program Applications by Processing Time and Federal Dollars From October 1998 Through June 2000



Note: See appendix I for official program titles and a summary of major program areas.

Source: GAO's presentation of data from FTA.

DOL's Transit Labor Protection Certifications Are Generally Timely, but Several Factors Can Cause Delays

In December 1995, DOL responded to congressional concerns about its timeliness in issuing labor protection certifications by issuing guidelines that established time frames for processing labor protection certifications in a more expeditious and predictable manner. The guidelines became effective in January 1996 and were intended to ensure that labor protection certifications were provided within 60 days of DOL's referral of protective terms and conditions to applicants and labor unions.

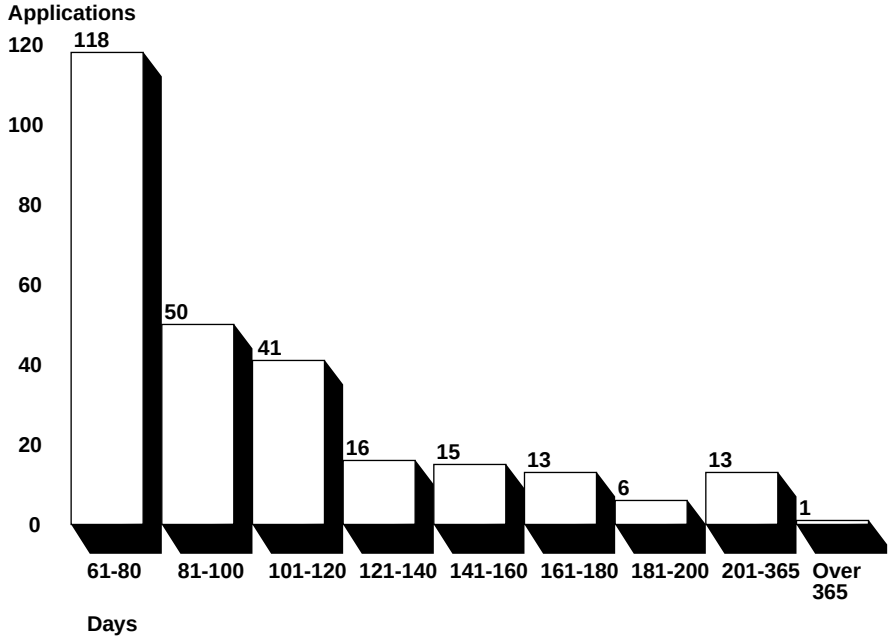
As outlined in our April 25, 2000 testimony, 98 percent of DOL's applications processed from January 1996 until January 31, 2000, met DOL's internal 60-day processing goal.[7] But DOL's 60-day processing goal does not count the time it takes to refer the terms and conditions to the applicant and labor unions and the time that an application is suspended because, for example, it is incomplete.[8] To determine DOL's total certification processing time, we analyzed DOL's data from the time that DOL received an application from FTA through the certification of labor protection arrangements, including the time that DOL takes to refer terms and conditions to applicants and unions and any time that DOL suspended an application as incomplete or inactive.

From January 1996 through April 2000, DOL processed 4,073 applications for $32 billion in federal transit assistance; DOL issued certifications for 93 percent of these applications within 60 days. For the remaining 7 percent—273 applications, seeking approximately $2.5 billion in federal transit assistance—DOL took more than 60 days to certify labor protection terms and conditions. Figure 3 shows that for the 273 applications DOL took from 61 to 80 days to process 118 applications, 81 to 100 days to process 50 applications, and 101 to over 365 days for the remaining 105 applications.

[7]See *Transit Grants: Department of Labor's Certification Process* (GAO/T-RCED-00-157, Apr. 25, 2000).

[8]DOL officials stated that DOL's 60-day goal begins with the referral of employee protection terms and conditions, since DOL can only begin processing those grant applications that contain enough information to properly determine the affected employees and their representatives.

Figure 3: DOL's Processing Time Beyond 60 Days From January 1996 Through April 2000



Source: GAO's presentation of data from DOL.

The primary reason why DOL took longer than 60 days to issue certifications is that applications were suspended. DOL suspended 152 (56 percent) of the 273 applications where its processing time exceeded 60 days.[9] Most suspensions occurred because the application that DOL received from FTA contained invalid or incomplete information. DOL suspended 117 of the 152 applications because they were incomplete. For 35 of the 152 applications, DOL suspended processing and placed the application in an inactive status because of a particular problem, such as a conflict between the labor protection terms and conditions recommended by DOL and state law. Furthermore, for 22 applications, processing was suspended twice—once because DOL determined that the application was incomplete and later because DOL determined that the application should have been transferred to an inactive status. Neither DOL nor FTA compile information on the reasons why applications are classified as incomplete or inactive.

Another reason why DOL takes longer than 60 days is that the grant applicant and/or union objects to the labor protection terms and conditions that DOL referred to them. For 105 (38 percent) of the 273 applications where DOL's processing extended beyond 60 days, a party, generally a labor union, objected to the terms and conditions referred by DOL. DOL determines which objections are valid from criteria included in its published guidelines. DOL provides information related to specific objections to grantees, unions, and others upon request. However, comprehensive information on the types of objections that have historically been found to be valid is not widely available to the public because DOL does not compile and distribute such data. While DOL maintains copies of objections, it does not have electronic information that captures the particulars related to the objections filed. Rather, its electronic information related to objections is limited to DOL's response to the objections received. DOL officials advised us that the responses often do not make much sense apart from the objections filed but that DOL is examining different approaches to make objections and responses available to the public.

[9]DOL's data on application suspensions may understate the number of suspensions during the period from January 1996 through September 1997, but a new application-tracking system that DOL has used since October 1997 is designed to systematically capture these data.

Furthermore, when DOL determines that the objections are valid and the parties are unable to resolve disputed matters through negotiations, the parties can submit legal arguments (briefs) to DOL and respond to the arguments presented. Thereafter, DOL makes a determination and explains its reasons for requiring specific arrangements in certification decisions. DOL makes information on its determinations available to the parties, and information on DOL's certification decisions is also available to others on request. In addition, DOL officials advised us that they plan to post significant certification decisions on a Website that is under development.

Neither FTA nor DOL has determined whether DOL's labor certification requirement delays the release of federal funds. In order to determine the extent to which delays in DOL's processing were delaying FTA's release of funds, we attempted to compare DOL's and FTA's processing times for the 273 applications for which DOL took longer than 60 days to issue a labor protection certification. However, we were unable to complete this analysis because we frequently encountered problems in reconciling application information between the DOL's and FTA's databases. We found the following problems with 43 percent—118—of the 273 applications analyzed:

- *No corresponding application numbers*. For 66 of the 273 applications reviewed in the DOL information system, there were no corresponding FTA application numbers to permit a comparison of processing time frames.
- *Recorded dates do not make sense*. FTA forwards grant applications to DOL after an initial review, and DOL's certification of labor protection arrangements is a condition of federal transit assistance. However, for 52 of the 273 applications reviewed, a comparison between DOL's and FTA's records indicated that the records are not synchronized, which could lead to the inference that DOL received an application before it was submitted to FTA or that the FTA award was made prior to the DOL certification date.

FTA officials suggested that database discrepancies could be associated with the fact that multiyear grants under one DOL certification are applicable to all phases of a project. While we recognize that this may be the case, we also note that our analysis focused on those instances in which a DOL certification took longer than 60 days to issue, according to DOL records. Furthermore, FTA officials noted that the agency's data do not indicate situations in which FTA approved grants before receiving a DOL certification and believe that data entry mistakes gave rise to our

questions. DOL officials told us that various reasons might account for the discrepancies we identified between the two agencies' databases, such as changes in the project number by FTA, which occur after certification. Furthermore, while both DOL and FTA officials expressed confidence in the reliability of their agencies' data, these officials told us that they would work together to resolve data discrepancies.

Because problems were encountered for 43 percent of the 273 applications reviewed, we did not proceed further with the planned comparison of processing time by FTA and DOL. Furthermore, any attempt to assess FTA's processing of applications in relation to DOL's issuing of transit labor protection certifications will be compromised unless steps are taken to resolve often irreconcilable data between the two agencies' databases.

Administrative Procedure Act and DOL's Labor Certification Process

Representatives of the American Public Transportation Association have proposed that the Administrative Procedure Act be applied to the DOL certification process because of concerns about the accessibility of DOL's decisions and underlying rationale, as well as concerns about the consistency of DOL's determinations.[10] However, they told us that their goal is to obtain improvements in the accessibility and consistency of DOL's decisions, rather than the application of any particular APA provisions. In addition, they have expressed concerns about the use of any procedures that could lengthen the grant approval process and further delay the release of grant funds.

The APA contains uniform procedural requirements for certain types of agency decisionmaking. It establishes a relatively simple process for informal rulemaking, and a more elaborate process for formal rulemaking and adjudication required by statute to be made on the record after an opportunity for an agency hearing. With regard to formal proceedings, the APA provides for trial-type hearings typically conducted by administrative law judges. It also sets forth the principles of judicial review and requirements for the public disclosure of agency information.[11]

[10]The American Public Transportation Association is a nonprofit organization representing over 1,000 transit and related entities.

[11]Requirements for public disclosure are contained in section 552 of title 5, United States Code, which is commonly referred to as the Freedom of Information Act.

DOL is subject to the provisions of the APA concerning judicial review and the public disclosure of information in carrying out its certification activities; however, the trial-type procedures required for formal proceedings do not apply to the certification process. Notably, neither the representatives of the transit industry nor a union we spoke to advocate applying the trial-type requirements of formal adjudication under the APA to the certification process. Similarly, DOL officials have pointed out that the application of these procedural requirements would result in significant delays in certification and impede DOL's ability to issue certifications within the time frames contained in its guidelines.

There are actions that DOL could take, and is considering, to further the objectives of disclosure and consistency in the labor certification process without applying additional procedures contained in the APA that could lengthen DOL's process. For example, DOL could maintain electronic information capturing the substance of the objections filed by unions or grant applicants to proposed terms and conditions, as well as DOL's response. Maintaining and disclosing such data would allow grant applicants and unions to determine the types of objections that DOL has historically found to be valid. Similarly, DOL could disseminate significant certification decisions, along with a subject matter index. Providing such information would heighten awareness of DOL's positions on labor protection issues in the transit and labor communities, help the parties to refine their positions on disputed matters; and, by publicizing DOL's positions, help to ensure consistency in its decisionmaking. DOL is currently working on making such information available through an Internet Website that is under development.

Conclusions

FTA has not established any formal goals for processing transit grant applications. Furthermore, its informal 90-day goal was met a little less than half the time. In addition, only 1 of FTA's 10 regional offices had an average processing time of less than 90 days. FTA has not analyzed why its informal goal is often not met or why there are differences in processing times among its regions. This lack of predictability and consistency in processing time can make project planning and execution extremely difficult for transit agencies.

In order to determine the reasons for delays in processing and variations among the regions, it is important that FTA periodically assess the status of its grant applications including DOL's labor protection certifications. This type of assessment would provide a basis for FTA to identify and address

delays and would enable it to provide the transit community and congressional oversight committees with information on the status and expected processing time of grant applications. In order to conduct this assessment, FTA and DOL will have to resolve discrepancies and inconsistencies between the two agencies' databases.

Recommendations

We recommend that the Secretary of Transportation establish formal goals for processing transit grant applications and monitor the status of grant applications. In addition, we recommend that the Secretary of Transportation, in cooperation with the Secretary of Labor, (1) take action to ensure that both Departments' transit application databases are comparable and reliable and (2) periodically assess the status and timeliness of federal transit application processing by both Departments, provide data on the exceptions where the goals have not been met, and report the results of this assessment along with measures to implement any needed improvements to the Congress.

Agency Comments

We provided DOT and DOL with copies of a draft of this report for their review and comment. To obtain DOT's comments on the draft of this report, we met with agency officials, including the Director of FTA's Office of Resource Management and State Programs. FTA generally concurred with our conclusions and recommendations and agreed to establish a goal for formula grant programs that will be announced in the annual Federal Register notice. In addition, FTA noted that it will monitor the processing time of all its grant applications and provide reports, which will be made available to the Congress, as to its overall accomplishment of timeliness goals. However, FTA stated that it would not be appropriate to identify specific grants to the Congress because this could create additional delay. To address DOT's concern, in part, we clarified our recommendation to say that we would expect FTA to limit its reporting on individual grants to those exceptions for which FTA's processing goals have not been met. This reporting should be facilitated by FTA's plans to ask its regional offices to electronically record the reasons for delays when an application takes more than 90 days for FTA to process.

DOL commented that our draft report does not take into account certain factors it used to establish a certification goal of 60 days. Our draft report noted that DOL's 60-day goal begins with the referral of employee terms and conditions to the applicant and labor union. We recognize that DOL cannot

process applications until they are complete. However, in order to provide a full picture of the time required for certification, we counted the time from DOL's receipt of an application until a certification was issued. DOL's comments, along with our response, are included in appendix II.

Scope and Methodology

In reviewing the timeliness and consistency of FTA's processing of grant applications, we obtained and analyzed data from FTA's TEAM database. This analysis included a review of individual grants in order to compare FTA's and DOL's data on the 273 applications for which DOL took more than 60 days to issue either an interim or final labor protection certification. We also attended a Region 9 seminar on the TEAM database. In addition, we obtained a July 2000 analysis from FTA that we used to determine average processing times by regional offices and program areas. Furthermore, we discussed processing issues with senior FTA program officials and representatives of their Office of Chief Counsel.

To identify the number of applications for which DOL's processing time extended beyond 60 days and the factors contributing to processing delays, we accessed and analyzed data from DOL's information system from January 1996 through April 2000. While DOL's guidelines provide that its 60-day goal begins with the referral of protective terms and conditions, our analysis was based on the time from DOL's receipt of an application until a certification was issued. Thus, we considered the time when DOL received an application from FTA through the labor protection certification, the time that DOL takes to refer terms and conditions to applicants and unions, and the time that applications were suspended as incomplete or inactive. In addition, we analyzed DOL's data to determine the major reasons for delays. We discussed issues regarding transit application processing with program officials and officials in DOL's Office of the Solicitor.

To provide information on the applicability of the APA to the transit labor certification process, we reviewed the statute to determine which provisions do or do not apply at present. We discussed the broader application of APA to the labor certification process with DOL and FTA officials, representatives of the American Public Transportation Association, a representative of the Amalgamated Transit Union, and an attorney who authored a legal research guide to section 13(c).[12]

[12] *Transit Labor Protection—A Guide to Section 13(c) Federal Transit Act.* Transit Cooperative Research Program, Legal Research Digest (June 1995).

We performed our review from June 2000 through July 2000 in accordance with generally accepted government auditing standards.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report for 30 days after the date of this report. At that time, we will send copies of this report to the Honorable Alexis M. Herman, Secretary of Labor; the Honorable Rodney E. Slater, Secretary of Transportation; the Honorable Jacob J. Lew, Director, Office of Management and Budget; and other interested parties. We will also make copies available to others on request.

If you have any questions about this report, please call me at (202) 512-2834. Major contributors to this report were Helen Desaulniers, Yvonne Pufahl, Ron Stouffer and Wendy Wierzbicki.

Phyllis F. Scheinberg

Associate Director
Transportation Issues

Federal Transit Administration's Major Grant Programs

Federal Transit Administration's Major Program Area Descriptions

Urbanized Area Formula. The objectives of urbanized area formula grants are to assist in financing the acquisition, construction, cost-effective leasing, maintenance, planning, and improvement of facilities and equipment for use by operation, lease, contract, or other means in mass transportation services. Additionally, for urbanized areas with populations of under 200,000 the payment of operating expenses to improve or to continue such service by operation, lease, contract, or other means are also eligible.

Bus—Capital Investment. The Bus Category Program refers to that part of the Capital Investment Program that provides assistance for buying or leasing, replacing, and rehabilitating buses and related equipment and for constructing bus-related facilities.

New Starts—Capital Investment. The New Starts Program refers to that part of the Capital Investment Program that provides assistance for new fixed-guideway systems or extensions to existing systems. The project can be a light-rail line, subway line, commuter rail line, automated fixed-guideway system (such as a "people mover"), busway/high-occupancy vehicle (HOV) facility, or an extension of any of these. Also, projects can involve the development of transit corridors and markets to support the eventual construction of fixed-guideway systems, including the purchase of land to protect rights-of-way or construction of park-and-ride lots.

Fixed Guideway Modernization—Capital Investment. Under this part of the Capital Investment Program, financial assistance is available for, but not limited to, the purchase and rehabilitation of rolling stock (including railcars, locomotives, work trains, and ferryboats), track, line equipment, and structures; signals and communications; power equipment and substations; passenger stations and terminals; security equipment and systems; maintenance facilities and equipment; and operational support equipment for existing fixed guideway systems, which have been in service for at least 7 years.

Elderly and Persons With Disabilities. The objective of the Elderly and Persons With Disabilities Program is to provide financial assistance in meeting the transportation needs of elderly persons and persons with disabilities where public transportation services are unavailable, insufficient, or inappropriate. The program is designed to supplement the Federal Transit Administration's (FTA) other capital assistance programs

by funding transportation projects for elderly persons and persons with disabilities in all areas—urbanized, small urban, and rural.

Nonurbanized Area Formula. The objectives of Nonurbanized Area Formula grants are to improve, initiate, or continue public transportation service in nonurbanized areas by providing financial assistance for operating and administrative expenses and for the acquisition, construction, and improvement of facilities and equipment.

Job Access and Reverse Commute. This program is designed (1) to develop transportation services designed to transport welfare recipients and low-income individuals to and from jobs and (2) to develop transportation services for residents of urban centers and rural and suburban areas to suburban employment opportunities.

Over-the-Road Bus Accessibility (*Rural Transportation Accessibility Incentive Program*). This program is designed to assist operators of over-the-road buses to finance the incremental costs of complying with the Department of Transportation's final rule regarding the accessibility of over-the-road buses required by the Americans With Disabilities Act.

Comments from the Department of Labor

Note: GAO's comments supplementing those in the report's text appear at the end of this appendix.

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

August 14, 2000

Phyllis F. Scheinberg
Associate Director
Transportation Issues
United States General
Accounting Office
Washington, DC 20548

Dear Ms. Scheinberg:

Thank you for providing this opportunity for the Department of Labor (DOL) to review GAO's report entitled "Need for Improvements in Predictability, Data and Monitoring in Application Processing".

See comment 1.

As you know, in developing the Section 13(c) processing guidelines, DOL published the proposed guidelines in the Federal Register, 60 Fed. Reg. 62964 (Dec. 7, 1995), and received and reviewed comments from interested parties in the transit industry. The guidelines, which can be found at 29 C.F.R. Part 215, established a processing goal of 60-days from the date of referral, not receipt, for certification of projects which contain the "information necessary to enable the Department to certify the project."

Accordingly, in measuring the timeliness of DOL's certifications from the date of receipt, GAO's report does not take into account certain factors used in establishing a certification goal of 60 days from referral of an application. Grant applications can only be processed when they contain enough information to identify the scope of the project and properly determine the affected employees and their representatives. Thus, DOL subtracts the time between receipt of a grant and its referral - the goal of which is five days - which is used to insure the grant is complete, before beginning the 60 day certification process. DOL, nevertheless, processes 97% of FTA grant applications within 60 days of referral.

Working to Improve the Lives of America's Workers

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See comment 2.

In the discussion of the Administrative Procedures Act, GAO indicated that transit management is seeking "improvements in the accessibility and consistency of DOL's decisions." DOL provides an open and transparent process for certifying Section 13(c) arrangements. DOL determinations are accessible to the public, and are provided to the parties upon request. In fact, DOL's guidelines mandate that "[t]he Department will make available final decisions it renders on disputed issues." See 29 C.F.R. §215.3(e)(5). We also provide technical assistance to any party upon request. The openness of the process is demonstrated by the parties' full participation at every stage. The availability of previous DOL determinations is evident since the parties cite these in the briefs they submit to DOL.

DOL is working to see that information relating to the 13(c) program is, nevertheless, made available on line. A Website, at www.dol.gov/dol/esa/public/regs/compliance/olms/dsppage.htm, provides general information on the program. This site will be supplemented with significant determinations, and we are examining different approaches to make objections and responses available to the public.

See comment 3.

Finally, GAO indicates that it was unable to reconcile application information between the DOL and FTA databases. We are confident that our database is fundamentally accurate, yet we are nevertheless concerned about these discrepancies. In response, we are working with FTA on issues relating to the processing of grants and will take this opportunity to address the reconciliation of DOL and FTA databases.

Sincerely,

Bernard E. Anderson

The following are GAO's comments on the Department of Labor's (DOL) letter dated August 14, 2000.

GAO's Comments

1. Our report recognizes that DOL's 60-day goal begins from the referral of employee protection terms and conditions. However, as stated in our report, to determine DOL's total certification processing time, we counted from the time that DOL received an application from FTA through the final certification of labor protection arrangements. This time period includes the time it takes DOL to refer terms and conditions to applicants and unions and any time that the application is suspended because it is incomplete or inactive.

2. Our report recognizes that DOL makes information on its certification determinations available to the parties and others on request. Furthermore, our report recognizes that DOL plans to post significant certification decisions on an Internet Website that is under development.

3. Our report notes that while both DOL and FTA expressed confidence in the reliability of their data, officials from both agencies said that they would work together to resolve data discrepancies.

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